NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
D. P. MARSHALL JR., Judge

DIVISION II

CACR06-731

6 June 2007

BYRIAN FOOTE,
APPELLANT
v.

STATE OF ARKANSAS,
APPELLEE

AN APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT
[CR2004-552 I]

THE HONORABLE THOMAS LYNN WILLIAMS, CIRCUIT JUDGE

AFFIRMED

A jury convicted Byrian Foote of murder, attempted murder, and burglary. He appeals his convictions, challenging the circuit court's denial of his motion to suppress three statements he made while he was in police custody. We affirm the circuit court's ruling because Foote did not clearly and unequivocally invoke his right to counsel before making the statements.

The Hot Springs police brought Foote to the police station in connection with a homicide investigation. Officer Steve Hill advised Foote of his *Miranda* rights, and Foote initialed and signed a form stating that he understood all of his rights. Hill had dealt with Foote before, and testified that Foote had "always been cooperative and

willing—he likes to talk a lot." Foote began to tell Hill about the homicide: he was at the crime scene, heard the shooting, and saw one of the suspects. Officer Sherry Speer was also present during this statement. Hill handwrote Foote's statement, and after reading it, Foote made two corrections. He then said that he wanted to wait until his lawyer, Clay Janske, arrived before signing the statement.

Later, while Officer Speer was booking Foote and asking routine questions, Foote started talking about the homicide. Speer testified she did not initiate this conversation, but did point out to Foote that he had added some details to his story since his first statement. He agreed to let her type his second statement, but again stated that he would not sign it until Janske arrived.

Officer Chris Crary then questioned Foote further. He reminded Foote that he was under the *Miranda* warning, but because he had not left police custody, Crary did not reread the warning to him. When Crary told Foote that another suspect had given a different version of the crime, possibly implicating Foote, he made another statement. After this third statement was typed, Foote again refused to sign until his lawyer arrived.

On appeal, Foote argues that the interviewing should have stopped when he first said he would not sign the statements until Janske arrived. He adds that, if the officers were unclear about whether he was requesting his attorney, they should have stopped the interview and clarified Foote's intentions. Foote does not argue that he

was coerced into making the statements or that the police prevented him from actually contacting Janske. After our *de novo* review of all the circumstances, and deferring to the circuit court on credibility issues, we hold that the circuit court did not err in denying Foote's motion to suppress. *Marshall v. State*, 92 Ark. App. 188, 190, 211 S.W.3d 597, 599 (2005).

To invoke his right to counsel, Foote had to clearly and unambiguously ask to see his lawyer. *Baker v. State*, 363 Ark. 339, 343–44, 214 S.W.3d 239, 242 (2005). If his reference to Janske was ambiguous or equivocal, such that a reasonable police officer in light of the circumstances would not have been sure what Foote wanted, then the officers were not required to stop questioning him. *Ibid*. Two of the officers testified that Foote never requested that his lawyer be present before Foote answered any questions or continued to talk to the police. The record is also clear that Foote never asked to contact his lawyer, nor did he ask the police to contact his lawyer for him, before he made any of his statements. Further, he gave his second statement to Officer Speer spontaneously, not as the result of interrogation. The fact that Foote said he would not sign his statements unless his lawyer was present does not change our analysis. The law did not require the officers to stop and parse Foote's words to determine whether he wanted his attorney present before speaking further. *Holsombach v. State*, 368 Ark. 415, ___, ___ S.W.3d ___ (2007). Because Foote did not clearly terminate the interviews, his statements were admissible at trial against

him.

Affirmed.

GLADWIN and MILLER, JJ., agree.